

*Per [unclear] [unclear]  
Boat Builders*

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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A REVISION TO )  
A SUBSTANTIAL DEVELOPMENT PERMIT )  
ISSUED BY ISLAND COUNTY TO )  
NICHOLS BROTHERS BOAT BUILDERS, INC. )

STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY GENERAL, )  
Appellants, )

v. )

ISLAND COUNTY and NICHOLS )  
BROTHERS BOAT BUILDERS, INC., )  
Respondents. )

SHB No. 216

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a revision to a substantial development permit issued by Island County to Nichols Brothers Boat Builders, Inc., was brought before the Shorelines Hearings Board, Chris Smith, Chairman, W. A. Gissberg, Art Brown, Gerald D. Probst, Robert F. Hintz, and Robert E. Beaty, on August 10, 1976, in Coupeville, Washington.

Assistant Attorney General Charles W. Lean appeared for Appellant

1 Department of Ecology; Matthew D. Griffin represented Respondent  
2 Nichols Brothers Boat Builders, Inc.; Prosecuting Attorney David F.  
3 Thiele appeared for Respondent Island County; Hearing Examiner Ellen D.  
4 Peterson, presided.

5 Having heard the testimony, having examined the exhibits, and  
6 having reviewed the parties' closing arguments, the Shorelines Hearings  
7 Board makes the following

8 FINDINGS OF FACT

9 I

10 Nichols Brothers Boat Builders, Inc., applied for a substantial  
11 development permit from Island County on January 18, 1973, citing the  
12 "intended use of property" as "Boat Manufacturing."<sup>1</sup> The subject site  
13 is approximately 4.2 acres of Lot 21, Syndicate Addition to Freeland  
14 in Section 10, Township 29 north, Range 2 east of the Willamette meridian,  
15 Whidbey Island, Washington, within 200 feet of Holmes Harbor. The site  
16 plan, reviewed as a part of the application by the County Commissioners,  
17 detailed the following:

- 18 - an 8 foot fence surrounding the project  
19 - parking area on the east of the site  
20 - machine shop building  
21 - four concrete pads with one extension indicated

22 On the application, cost of construction was estimated as \$2,000.

23  
24 1. As distinguished from later application forms which request  
25 "Description of Proposed Development and Construction and Intended  
26 Use of Property," this early form asked only "Intended uses of  
27 Property."

1 A substantial development permit (No. 73-02) was issued to Nichols  
2 Brothers Boat Builders, Inc., on March 19, 1973, to undertake the  
3 construction of the following:

4 Boat Building Business . . . pursuant to the following terms  
5 and conditions: Island County Building Permit, issuance of  
6 a Conditional Use Permit establishing conditions -- Board of  
Adjustment Hearing, March 7, 1973 "(and) Adoption of  
Commercial Classification."

7 The condition which required Nichols Brothers to obtain a building  
8 permit is routinely added by the County on all shoreline permits; the  
9 conditional use permit referenced did not detail additional structures  
10 on the site.

11 II

12 On December 6, 1975, Nichols Brothers applied to Island County  
13 for a revision to its substantial development permit 73-02. As recited  
14 in the application, the proposed development to be constructed within  
15 the eight foot fence included:

16 . . . buildings per rezone agreement . . .

17 Drafting room (adjacent to present office): 32' x 16' x 10'  
18 Metal Fabrication Building: 50' x 22' x 19'9"  
Boat Construction Building: 100' x 40' x 34'6"

19 A revision to the substantial development permit was granted by  
20 Island County on March 8, 1976, to undertake the following development:

21 Boat Manufacturing; construction of buildings per rezone  
22 agreement, drafting room (adjacent to present office), metal  
23 fabrication building and boat construction building . . .  
24 buildings be constructed of non-reflective materials and  
shall comply with the plot plan of the Nichols Brothers  
Boatyard identified as Exhibit "A" and attached hereto.

25 In addition to those structures which the permit revision itself

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1 specifies, Exhibit "A" details: two fixed cranes, a parking and fill  
2 area on the west of the site, two float tanks and a building on the  
3 site's southeast corner, storage building, and an office building with  
4 a nearby shed.

5 Appellants timely appealed the permit revision on March 13, 1976,  
6 alleging:

7 1. The new construction constitutes substantial develop-  
8 ment as defined at RCW 90.58.030(3)(e) for which a permit is  
required by RCW 90.58.140(2).

9 2. The proposed construction is not within the scope or  
10 intent of the original substantial development permit (#70-2)  
11 issued March 19, 1973 . . . pursuant to WAC 173-14-064 and  
therefore requires a new substantial development permit with  
the requisite notice to the public. . . .

12 III

13 WAC 173-14-064, as it was in effect throughout the processing  
14 of the instant permit revision, provided:

15 REVISIONS TO SUBSTANTIAL DEVELOPMENT PERMITS. When an  
16 applicant seeks to revise a substantial development permit,  
local government shall request from the applicant detailed  
17 plans and text describing the proposed changes in the permit.

18 (1) If local government determines that the proposed  
changes are within the scope and intent of the original permit,  
19 local government shall approve a revision. The revised permit  
shall become effective immediately. The approved revision  
20 along with copies of the revised site plan and test, should be  
submitted by certified mail to the appropriate department of  
ecology regional office, the attorney general, and to persons  
21 who have previously notified local government relative to the  
original application pursuant to WAC 173-14-070. Appeals  
22 shall be in accordance with RCW 90.58.180 and shall be filed  
within 15 days from date of certified mailing. The party seeking  
23 review shall have the burden of proving the revision granted  
was not within the scope and intent of the original permit.

24 (2) If the proposed changes are not within the scope and  
intent of the original permit, the applicant shall apply for a  
25 new substantial development permit in the manner provided for  
herein.

26  
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IV

Nichols Brothers Boatbuilders, Inc. has operated a boatyard at the subject site since 1964.

The company constructs custom made boats, limited to date to tugs, small fishing vessels, and excursion boats. Since 1964 to the present time, an average of three or four boats have been constructed each year. Although the type of craft constructed has remained constant, the size of the vessels has increased over the years, the largest to date being a fishing vessel 92 feet in length.

In 1964, Nichols Brothers had three or four employees; at the time the initial permit was granted in 1973, the number of employees had increased to 14. By March, 1976, the date of the permit revision, Nichols Brothers employed 45 persons at the yard.

All activity on the subject site, from 1964 to date and as proposed, is related to a boat building business.

V

The construction of the drafting room, the metal fabrication building, and the two fixed cranes now in place on the project site, considered individually or as a single project, cost in excess of \$1,000.00. The estimated cost of the proposed boat construction building would also exceed \$1,000.00.

VI

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Shorelines Hearings Board comes to these

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1 CONCLUSIONS OF LAW

2 I

3 The issue before the Shorelines Hearings Board in this matter is  
4 a narrow one, i.e., is the development for which the permit revision  
5 issued on March 8, 1976, within the scope and intent of the substantial  
6 development permit 73-02 issued on March 19, 1973?

7 II

8 In determining the scope and intent of the initial permit, the  
9 Board must define the parameters of the permit consistent with the  
10 recent Washington State Supreme Court decision, Hayes v. Yount,<sup>2</sup>  
11 wherein the Court stated:

12 In the present case, the board correctly concluded that it  
13 could not carry out its statutory duty to further the  
14 important priority of use policy because the permit did not  
15 describe respondent's proposed use in sufficient detail . . .  
16 Effective operation of the permit review process, as well as  
17 enforcement of the act, see RCW 90.58, demands that shore-  
18 line permits be complete in themselves and contain sufficient  
19 detail to enable the local government and the board to  
20 determine consistency with the policy of preferred water-  
21 dependent uses and other policies set forth in RCW 90.58.020  
22 and the implementing regulations.

23 The Supreme Court recognized that in addition to enabling review of  
24 a development's consistency with the policy of preferred uses, shore-  
25 line permits must be "complete in themselves and contain sufficient  
26 detail to enable the local government and the Board to determine  
27 consistency with . . . other policies set forth in RCW 90.58.020 and  
28 the implementing regulations." (Emphasis added.) These policies go  
29 beyond "use" and are also concerned with potentially adverse effects

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26 2. 87 Wn.2d 280, \_\_\_ P.2d \_\_\_ (July 30, 1976).

1 on public health, vegetation, wildlife, waters and their aquatic life,  
2 etc. Such latter impacts can be effectively measured or anticipated  
3 only when the specific dimensions or scope of the development are set  
4 forth in sufficient detail.

5 Deficiencies of the permit in this regard cannot be overcome by a  
6 retrospective assessment of impacts from construction not "authorized"  
7 under the initial permit.

8 Thus, the Board, under Hayes v. Yount, in identifying what was  
9 authorized under an initial permit, must find that the requisite  
10 "sufficient detail" was evident on the permit itself or on specific  
11 supporting documents which include the application, the site plan,  
12 and those documents incorporated by reference on the face of the permit.

### 13 III

14 Under the facts of this case, the intended use of the property, a  
15 boat building business, is clear on the face of the permit. However,  
16 the extent to which such use was to be implemented, i.e., the  
17 detailing of proposed substantial developments included only those  
18 structures as recited in Finding of Fact I, i.e., the fence, the parking  
19 area, the machine shop, and the concrete pads.

### 20 IV

21 Despite the legitimate concerns with the need for specificity  
22 expressed in Hayes v. Yount, the promulgation of WAC 173-14-064  
23 entitled "Revisions to Substantial Development Permits" recognized a  
24 need for permitting some flexibility in altering the parameters of  
25 a development authorized under a permit.

26 As used in WAC 173-14-064, we construe the "intent" of a permit

1 to relate to the type of land use authorized, while the "scope" of  
2 the permit relates to the actual substantial development(s) which may  
3 be constructed. Our interpretation of the DOE rule is consistent with  
4 RCW 90.58. The policy section therein requires: "planning . . .  
5 appropriate uses;" the development of guidelines and master programs  
6 which shall give preference to uses" in specified order; ". . . uses  
7 shall be preferred which are consistent with" certain stated criteria;  
8 . . . alterations of the natural condition of the shoreline shall be  
9 given priority for certain "uses . . . which are particularly dependent  
10 on their location on or use of the shorelines . . ."

11 In addition to establishing such priorities as a matter of policy,  
12 however, the statute prohibits any substantial development which does  
13 not have a substantial development permit. Thus the statute contemplat  
14 a planning for authorization of certain use activities, but within such  
15 use activity, specific substantial development permits must be obtained.

16 Thorough official review and significant public exposure, attendant  
17 to the processing of a substantial development permit were guaranteed  
18 under the Shoreline Management Act as to any substantial development  
19 permit.

20 Permit revisions, authorized under WAC 173-14-064, however,  
21 receive only cursory official review and no public comment. Indeed, if a  
22 revision is found to be within the scope and intent of the original  
23 permit, the local agency can exercise no judgment as to the desirability  
24 of the revision but "shall approve" the revision.

25 Thus, the Board concludes that to further the clear purposes and  
26 policies of the Shoreline Management Act, WAC 173-14-064 cannot be

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1 relied on to authorize any substantial development of a type which was  
2 not sufficiently detailed or identified on the face of the initial  
3 permit or its supporting documents.

4 V

5 In amending WAC 173-14-064, effective July 27, 1976, the Department  
6 of Ecology clarified the limits it places on a permit revision and  
7 specifically construed "scope and intent" as meaning, in part, " . . .  
8 PROVIDED that revisions involving new structures not shown on the  
9 original site plan shall require a new development permit." The Board,  
10 in its interpretation of the earlier language applicable to this case,  
11 does not go this far but is in effect requiring that revisions  
12 involving new structures not shown on the original permit or its  
13 supporting documents which in themselves are substantial developments  
14 shall require a new development permit.

15 VI

16 In applying this interpretation to the facts as presented in this  
17 case, the Board concludes that the drafting room, the metal fabricating  
18 building and the boat construction building are each in themselves a  
19 substantial development and hence are not properly the subject of a  
20 permit revision but rather require a separate permit.

21 While the merits of such an additional permit are not now before  
22 us, we observe that the developments now in place which were authorized  
23 by the permit revision are compatible with the site and consistent with  
24 the policy of the Act and the guidelines of the Department of Ecology.

25 VII

26 Any Finding of Fact which should be deemed a Conclusion of Law  
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1 is hereby adopted as such.

2 Therefore, the Shorelines Hearings Board issues this

3 ORDER

4 The permit revision granted by Island County to Nichols Brothers  
5 Boat Builders, Inc. on March 8, 1976, is vacated.

6 DATED this 7<sup>th</sup> day of October, 1976.

7 SHORELINES HEARINGS BOARD

8 Art Brown

9 ART BROWN, Chairman

10 Robert E. Beaty

11 ROBERT E. BEATY, Member

12 Robert F. Hintz

13 ROBERT F. HINTZ, Member

14 W. A. Gissberg

15 W. A. GISSBERG, Member

16 Gerald D. Probst

17 GERALD D. PROBST, Member

18 Chris Smith

19 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,  
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